

Appl. No.: 09/458,602  
Amdt. dated 07/10/2006  
Reply to Office action of 04/10/2006

## REMARKS

This response is submitted in reply to the outstanding final Office Action dated April 10, 2006. Claims 1-15 currently stand rejected. Applicants respectfully traverse.

In light of the remarks presented below, Applicants respectfully request reconsideration and allowance of all now-pending claims of the present application.

### Claim Rejections - 35 USC §103

#### Claims 1-2, 7, 9 and 11-14

Claims 1-2, 7, 9 and 11-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zhang et al. (U.S. Patent No. 6,253,327, hereinafter, “Zhang”) in view of Bartoli et al. (U.S. Patent No. 6,047,268, hereinafter “Bartoli”).

Applicant has previously amended independent claims 1 and 9 to recite, *inter alia*, no additional configuration software need be installed on the user’s computer to access the destination network and any other network. In other words, regardless of which network a user wishes to access, no configuration software will need to be installed onto the user’s computer. Such feature grants location independence to the user via the gateway device of the claimed invention. For example, a user may access any network from an airport terminal, a hotel room, or a kiosk without installing additional software to the user’s computer. The concept of location independence without reconfiguration is embodied in independent claims 1 and 9 by allowing access to a particular destination network and any other network without a need to install additional configuration software. It is submitted that neither of the references, either alone or in combination, teaches or suggests such a feature.

Zhang is directed to a single step network logon. Applicants agree with the assertion of the Office Action that “Zhang does not expressly disclose a system wherein no special authentication software need be installed on the user’s computer to access a destination address.” Furthermore, Applicants submit that Zhang fails to teach or suggest no additional configuration

Appl. No.: 09/458,602  
Amdt. dated 07/10/2006  
Reply to Office action of 04/10/2006

software need be installed on the user's computer to access the destination network and any other network as claimed in independent claims 1 and 9.

The Office Action cites Bartoli as curing the deficiency of Zhang. Applicants respectfully disagree with this assertion. Bartoli is directed to allowing authentication transactions to be performed via use of "cookies" to permit a user to conduct follow-on transactions without further installation of special software on the user's client terminal.

Bartoli lacks any specific disclosure of a feature that no additional configuration software need be installed on the user's computer to access the destination network and any other network as claimed in independent claims 1 and 9. However, Bartoli does disclose that use of the cookie system of Bartoli allows authentication transactions to be performed via use of cookies to permit a user to conduct follow-on transactions without further installation of "special software" on the user's client terminal (col. 3, lines 42-47). In this regard, the authentication of such transactions may only occur on merchant servers that enter into a billing agreement. No where does Bartoli discuss an aim or mechanism by which to grant access to any destination network without additional configuration software. In this regard, the Examiner has pointed to Figure 1 of Bartoli which shows two merchant servers. Applicants respectfully submit that the combination of the two merchant servers of Figure 1 and the disclosure of col. 3, lines 42-47 of Bartoli fails, without more, to teach or suggest that no additional configuration software need be installed on the user's computer to access the destination network and any other network as claimed in independent claims 1 and 9. As such, since Bartoli does not, without more, disclose that no additional configuration software need be installed on the user's computer to access the destination network and any other network, the Examiner is using personal knowledge to fill in the gaps between the present invention and Bartoli when stating that in Figure 1, Bartoli discloses the use of no special software to access the destination network and any other network. The Examiner can use "common knowledge" in a rejection by taking official notice of a fact, however, according to MPEP 2144.03, it is not appropriate to do so unless the facts asserted are capable of instant and unquestionable demonstration as being well-known. Additionally, as was stated in MPEP 2144.03 regarding *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d at 1697, "the Board cannot simply reach conclusions based on its own understanding or experience – or on its

Appl. No.: 09/458,602  
Amdt. dated 07/10/2006  
Reply to Office action of 04/10/2006

assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.” Since no basis can be found for the Examiner’s statement regarding the use of no special software to access the destination network and any other network can be found in **Bartoli**, Applicants “seasonably challenge” the Examiner’s use of personal knowledge to fill in the gap under MPEP 2144.03 citing the patent laws.

Applicants’ attorney conducted a telephonic interview with the Examiner on May 16, 2006. In the interview, Applicants explained their position that Bartoli fails to teach or suggest access to the destination network and any other network without additional configuration software. In response, as indicated in the Interview Summary of May 23, 2006, the Examiner has indicated that anybody can enter into a billing agreement and thus the user can communicate with any network. The Examiner interprets restriction of customer access to networks due to the billing agreement to be a business practice imposed by the administration. Furthermore, in the telephonic interview, the Examiner stated that the restriction of customer access to networks due to the billing agreement was not a technical limitation. Applicants respectfully disagree.

As agreed by the Examiner in the telephonic interview, it is impossible for a customer to conduct operations with a server that has not entered into the billing agreement. Applicants submit that the impossibility manifests as the result of technical limitations and not business practices. The technical effect of Bartoli is to enable access to users having appropriate cookies installed on the user’s client terminal and to prevent access to users not having the appropriate cookies. As such, the very essence of Bartoli’s disclosure is controlling access based upon technical criteria. Specifically, Bartoli discloses that access is controlled by technical means via detection and verification of cookies. The access control of Bartoli permits access just as readily as it denies access, and such access control is a technical achievement performed using the cookies. Accordingly, Applicants respectfully submit that the restriction of customer access to networks due to the billing agreement is in fact technical in nature and therefore, Bartoli’s restriction of access to certain servers based on the billing agreement constitutes a failure of Bartoli to teach or suggest that no additional configuration software need be installed on the

Appl. No.: 09/458,602  
Amdt. dated 07/10/2006  
Reply to Office action of 04/10/2006

user's computer to access the destination network and any other network as claimed in independent claims 1 and 9.

Additionally, Applicants respectfully point out that the decision of a merchant to enter into the billing agreement is outside the control of the user. Thus, from the user's perspective, the user is not in a situation in which no additional configuration software need be installed on the user's computer to access the destination network and any other network as claimed in independent claims 1 and 9. Rather, the user can only access servers that have entered into the billing agreement. Although the Examiner asserts that anyone can enter into the billing agreement, the feature above is not met by Bartoli. In this regard, even assuming every possible merchant enters into the billing agreement, the user is still not afforded access to **the destination and any other network** without additional configuration software since in situations where the user's cookie does not validate properly upon attempting to access a particular server, access will be denied. In this regard, Bartoli discloses that with each transaction, a new cookie having an incremented value is installed on the user's computer by the billing server (col. 5, lines 32-44). The new cookie contains information to be "used by the user's browser for authentication of the user for a next transaction" (col. 2, lines 60-65). Accordingly, if the value can be matched for a subsequent transaction, the transaction is seamlessly authenticated. However, if the value is not matched, the transaction is not seamlessly authenticated and thus access is not seamlessly granted. Thus, through no fault of the user, the user's computer in Bartoli may be denied access due to the technical limitations to access which are inherent in the system of Bartoli. Indeed, Bartoli's control of access, rather than an enabling of access to the destination network and any other network, is further highlighted in this instance. Accordingly, Bartoli only grants access to users attempting to access a merchant server that has entered into a billing agreement when the user's cookie has an expected value. Thus, Bartoli fails to teach or suggest that no additional configuration software need be installed on the user's computer to access the destination network and any other network as claimed in independent claims 1 and 9.

Since Zhang and Bartoli each fail to teach or suggest the aforementioned features of independent claims 1 and 9, any combination of Zhang and Bartoli also fails to teach or suggest the subject matter of independent claims 1 and 9. Thus, Zhang and Bartoli, taken either

Appl. No.: 09/458,602  
Amdt. dated 07/10/2006  
Reply to Office action of 04/10/2006

individually or in combination, do not anticipate, or render independent claims 1 and 9 obvious. Claims 2, 7 and 11-14 depend either directly or indirectly from a respective one of independent claims 1 and 9, and as such, include all the recitations of their respective independent claims. The dependent claims 2, 7 and 11-14 are therefore patentably distinct from Zhang and Bartoli, individually or in combination, for at least the same reasons as given above for independent claims 1 and 9.

Accordingly, Applicants respectfully submit that the rejection of claims 1-2, 7, 9 and 11-14 as being unpatentable over Zhang in view of Bartoli, is overcome.

#### Claims 3-6, 8 and 15

Claims 3-6, 8 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zhang in view of Bartoli, and further in view of Lim et al. (U.S. Patent No. 6,434,619, hereinafter “Lim”).

As stated above, neither Zhang nor Bartoli teaches or suggests that no additional configuration software need be installed on the user’s computer to access the destination network and any other network as recited in independent claims 1 and 9. Lim also fails to teach or suggest such feature and is not cited as such. Since Zhang, Bartoli and Lim each fail to teach or suggest the aforementioned features of independent claims 1 and 9, any combination of Zhang, Bartoli and Lim also fails to teach or suggest the subject matter of independent claims 1 and 9. Thus, Zhang, Bartoli and Lim, taken either individually or in combination, do not anticipate, or render independent claims 1 and 9 obvious. Claims 3-6, 8 and 15 depend either directly or indirectly from a respective one of independent claims 1 and 9, and as such, include all the recitations of their respective independent claims. The dependent claims 3-6, 8 and 15 are therefore patentably distinct from Zhang, Bartoli and Lim, individually or in combination, for at least the same reasons as given above for independent claims 1 and 9.

Accordingly, Applicants respectfully submit that the rejections of dependent claims 3-6, 8 and 15 as being unpatentable over Zhang in view of Bartoli, and further in view of Lim, are overcome.

Appl. No.: 09/458,602  
Amdt. dated 07/10/2006  
Reply to Office action of 04/10/2006

### CONCLUSION

In view of the remarks submitted above, it is respectfully submitted that the present claims are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present invention.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Chad L. Thorson  
Registration No. 55,675

**Customer No. 00826**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON JULY 10, 2006.  
LEGAL01/4835123v1